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D.T.E. 01-107

Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in Tariff MDTE No. 2, filed with the Department on December 2001, to become effective January 19, 2002 by Bay State Gas Company.

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I. INTRODUCTION AND PROCEDURAL HISTORY

On December 19, 2001, Bay State Gas Company (“Bay State” or “Company”) filed with the Department of Telecommunications and Energy (“Department”) a revised tariff MDTE No. 2, designed to implement new fees to be charged to competitive suppliers in the Company’s service territory; the new fees would be charged in exchange for billing services rendered by the Company to the suppliers. In addition to the revised tariff, the Company also submitted new fees for daily metered service to be charged directly to consumers. By Order dated December 21, 2001, the Department suspended the effective date of the proposed tariff until July 19, 2002, to investigate the propriety of the changes sought by Bay State.

Bay State, a subsidiary of NiSource, is a regulated natural gas distribution utility headquartered in Westborough, Massachusetts. The Company serves approximately 335,000 customers in over 60 cities and towns within the Commonwealth.

Pursuant to notice duly issued, the Department held a public hearing in Boston on February 11, 2002. At the public hearing, the Department granted Intervenor status to the Division of Energy Resources (“DOER”). AllEnergy Gas and Electric Marketing, LLC (“AllEnergy”), and Select Energy, Inc. (“Select”), each filed a Petition to Intervene Late, and the Department granted those petitions.

On April 11, 2002, the Department held an evidentiary hearing at its Boston offices. In support of its filing, the Company sponsored the testimony of three Bay State employees: Richard Sasdi, director of customer operations; Joseph A. Ferro, tariff administrator; and Robert Slate, manager of transportation service. The evidentiary record consists of 63 exhibits

and seven record requests.¹ The Intervenors presented no witnesses but cross-examined the Company's witnesses. Bay State, DOER, and AllEnergy also submitted briefs and reply briefs.

II. COMPANY PROPOSED FEES

A. Summary of Proposed Fees

The Company's filing seeks to update its current Terms and Conditions Tariff (M.D.T.E. No. 2) ("Terms and Conditions") to include suppliers fees consisting of: (1) a monthly fee of \$0.60 per customer bill to be charged to Supplier for Standard Passthrough Billing Service; (2) a monthly fee of \$1.50 per customer bill to be charged to Supplier for Standard Complete Billing Service; (3) a monthly fee of \$0.10 per customer account to be charged to Supplier for General Pool Administration Service; and (4) a Customer Switching fee of \$10 per switch to be charged to Supplier for taking a customer from another supplier's customer pool or moving a customer from one of its customer pools to another pool (Exh. BSG-1, at 1, Appendix B). In addition, the Company proposed fees to be charged directly to customers consisting of: (1) one-time telemetering fees for Daily Metered Service customers in the amount \$1,400 for instrumented meters and \$475 for non-instrumented meters; and (2) a maintenance fee of \$6.50 per month for Daily Metered Service customers (Exh. BSG-1, at 2). These fees are discussed below.

¹ Bay State filed a Motion for Protective Order ("Motion") requesting the Department to grant protective treatment to the information contained in its response to RR-DOER-3. The Motion is hereby granted, but with respect to pricing information only, and Bay State is ordered to provide the Department with a redacted version of its response to RR-DOER-3.

B. Billing Service and Pool Administration Fees

1. Standard Passthrough Billing Service Fee

The Company proposes a Standard Passthrough Billing Service fee of \$0.60 per bill per month for Suppliers for each of its customers not subscribing to the Standard Complete Billing Service (Exh. BSG-1, at 3, Appendix A at 1).² The Company listed the following services under the Standard Passthrough Billing: (1) electronic file(s) with metering information; (2) information support for suppliers; and (3) information reports (Exh. BSG-1, Appendix A at 2). The proposed fee is designed to recover \$45,000 in annual costs based on 600 hours per year of information systems services at \$75 per hour and assuming 6,600 transportation customers (Exh. BSG-1, Appendix A at 2; Exh. DOER-1-6).³

2. Standard Complete Billing Service Fee

The Company proposes to charge Suppliers a monthly fee of \$1.50 per bill for each of the Supplier's customers subscribing to the Standard Complete Billing Service (Exh. BSG-1, at 3, Appendix A at 2-4). In addition to the services provided under the Standard Passthrough Billing Service, which are included under the Standard Complete Billing Service, the Company listed the following services provided under Standard Complete Billing:

² Under the Standard Passthrough Billing Service, the customer taking distribution service from the Company will receive two bills: (1) a bill from the Company for distribution service; and (2) a bill from its Supplier for supplier service (M.D.T.E. No. 2, at 40, § 14.2.2). Under the Standard Complete Billing Service further described below, the customer receives a single bill from the Company for both distribution service and supplier service (*id.* at 39, § 14.2.1).

³ The Company determined the 6,600 customers based on the current level of approximately 5,990 commercial and industrial customers taking supplier services and assuming a ten percent increase (Exh. BSG-1, Appendix A at 1).

(1) electronic files with financial information; (2) line item on bill print; (3) management of receivables; (4) late fees for commodity as allowable; (5) electronic fund transfers; (6) support of customer level pricing; and (7) support of levelized budget plans (Exh. BSG-1, Appendix A at 2). This \$1.50 fee per bill per month consists of: (1) the \$0.60 fee for the costs associated with Standard Passthrough Billing service; (2) the \$0.61 to recover costs of information system and other set-up costs;⁴ and (3) \$0.29 representing what the Company characterized as a market-based element that suppliers would incur if they were to provide the service on their own (Exh. BSG-1, at 3, Appendix A at 3).⁵

3. General Pool Administration Fee

The Company proposes a monthly fee of \$0.10 per customer account for all Suppliers for General Pool Administration Services (Exh. BSG-1 at 1, 4). The Company lists supplier registration, capacity management, customer information, adjusted target volume, nominations and scheduling of service, balancing and imbalance trading, and communications as the services to be provided under the General Pool Administration Service (Exh. BSG-1, Appendix A at 4-5). This fee is based on 100 hours per year of information system services at \$75 per hour and assuming 6,600 customers (id., Appendix A at 5; Exh. DOER-1-9). The Company states that the fee is based on an estimate of information systems costs charged to Bay State by IBM prior

⁴ The Company determined the \$0.61 information and other set-up unit cost based on weekly wire transfers equaling \$6,240 per year plus costs of customized supplier reports of \$5,775 per year (or a total of \$12,015 per year), and assuming 1,650 customers (Exh. BSG -1, Appendix A at 3).

⁵ The Company determined this \$0.29 component cost as the difference between: (1) \$1.50, which Bay State claims to represents its historic costs to generate a full-service customer bill per month, and (2) the sum of the first two (\$0.60 plus \$0.61) component costs (Exh. BSG-1, Appendix A at 3; Exh. DOER-1-8).

to the Company establishing a Corporate Service Information Technology function, and that the fee is consistent with the Company's historic experience and cost structure (Exh. BSG-1 at 4; Exh. BSG-1 at Appendix A at 4-5; Exhs. DTE 1-15(b), DTE 1-17(a) and DOER 1-9).

4. Positions of the Parties

a. DOER

DOER argues that because the issue of supplier fees affects the entire community of utilities and suppliers, and given the important implications of the fees for the development of a competitive market in Massachusetts, the Department should open a generic inquiry into the issue of supplier fees to allow for full participation of all affected parties and to obtain input from the marketplace and the public as a whole (DOER Brief at 4, 5 and 13).

DOER also argues that the supplier fees that Bay State claimed are based on incremental costs are not supported by any data, clear and reasonable analysis, independent research, or Company records, and that the Company failed to provide evidence showing the propriety or fairness of the proposed fees (DOER Brief at 12; DOER Reply Brief at 4-8; citing Fitchburg Gas and Electric Light v. Department of Public Utilities; 375 Mass. 571, 582, (1978) citing New England Tel. & Tel. Co. v. Department of Public Utilities; 371 Mass. 67, 79 (1976)).

DOER claims that Bay State provided inconsistent and incomplete information to the Department for every fee that the Company proposed in this proceeding, and that the proposed fees are based more on conjecture, speculation, and anecdotes, than on actual incremental costs which the Company incurred to provide these services (DOER Brief at 3,12).

DOER argues that Bay State does not claim a need for interim rate relief or a financial crisis necessitating the Department's review of one small, finite set of operational costs outside

of a rate proceeding (id. at 15). DOER asserts that Bay State could not define the extent to which the proposed supplier fees and charges may have been recovered through base rates and other means (DOER Reply Brief at 8).

DOER argues that the very narrow scope of the proceeding makes it impossible to assess the proposed fees within any meaningful context (id. at 4). DOER claims that Bay State's petition exemplifies the danger with single-issue rate cases in that the case focuses on the change in a single item since the Company's last rate case, while ignoring completely the other changes that might have taken place in the Company's net income (id., citing Connecticut Valley Electric Company, Inc., DE 01-224, NHPUC Order No. 23,887 (December 31, 2001); Fitchburg Gas and Electric Light Company, D.T.E. 99-118, citing Mass-American Water Co., D.P.U. 95-118 (1995); Fitchburg Gas and Electric Light Co., D.T.E. 97-115/98-120 (1999)).

DOER also argues that the Department has considered the question of charging fees to suppliers in the context of Competitive Market Initiatives, D.T.E. 01-54-A, in which the Department directed "distribution companies to make Customer Information Lists available at no cost to suppliers." (DOER Brief at 16, citing D.T.E. 01-54-A, at 24). DOER notes that a base rate proceeding pursuant to G.L.c. 164 § 94 would be a more appropriate place to investigate the recovery of these costs (id. at 16-17). DOER therefore, asks the Department to deny Bay State's petition to charge the proposed supplier fees and reserve the issue for consideration in a base rate proceeding (id.).

Regarding the Company's proposed Standard Passthrough Billing Service fee, DOER states that the Company admitted on the record that overall information system costs had been included in Bay State's base rates in 1992 and that the Company was unable to separately

quantify incremental costs incurred for either the Standard Passthrough or the Standard Complete Billing Service (id. at 9, citing Tr. at 41-42; RR-DTE-2). DOER argues that because these costs are currently included in the Company's base rates, allowing the fee would amount to double collection by the Company (DOER Brief at 9). DOER also contends that Bay State failed to show that the \$0.50 portion of the Standard Complete Billing Service charge is market-based (id., citing Tr. at 114; Exh. DTE 1-12).

With respect to Bay State's proposed General Pool Administration fee, DOER notes that although the \$0.10 per customer account per month General Pool Administration fee appears small, multiplying \$0.10 by 3,729,663 bills/year amounts to \$372,966.30 in revenue for the Company, which is not insignificant (id. at 10-11). DOER contends that the proposed fee is not just and reasonable, and asks the Department to reject it for two reasons. First, Bay State could not demonstrate that the information systems costs were not already addressed in base rates as part of ongoing operations and maintenance (DOER Brief at 5, 11). Second, Bay State could not explain how the proposed fee compared to industry standards (id.).

b. AllEnergy

AllEnergy claims that Bay State's proposal to charge supplier fees is premature because the Department has not yet approved supplier fees (AllEnergy Brief at 2). AllEnergy argues that by filing supplier fees at this time Bay State ignores the Settlement in Settlement on Model Terms and Conditions, D.T.E. 98-32 (1998), between the ten LDCs in Massachusetts and a group of Suppliers, filed with the Department on July 10, 1998 (id.).

AllEnergy refutes Bay State's argument that the fee filing is a compliance filing, and explains that the fee language in the Model Terms and Conditions was essentially a placeholder

in recognition that further Department guidance on the policy issues underlying supplier fees was necessary (id., citing Settlement on Model Terms and Conditions, D.T.E. 98-32, § 2.14).

AllEnergy claims that the Department has not yet made a decision on the concept of the supplier fees proposed by Bay State, and urges the Department to defer the Company's petition until the Department has investigated and made policy determinations regarding supplier fees (id. at 3).

AllEnergy argues that Bay State failed to show that the proposed fees are just and reasonable because the Company did not establish that the costs underlying the proposed fees and charges actually occurred and are measurable in quantitative terms (id. at 5, citing Dedham Water Company, D.P.U. 84-32, at 17 (1984)). AllEnergy further argues that Bay State cannot claim that the costs associated with the supplier services are incremental costs because the Company could not explain what costs are already embedded in the Company's most recent rate order (id. at 6, citing Exh. BSG-1). AllEnergy, therefore, requests the Department to reject Bay State's petition to charge the proposed supplier fees (AllEnergy Reply Brief at 12).

AllEnergy argues that the Department should order Bay State to defer recovery of the costs associated with supplier services until the Company's next base rate proceeding (id. at 3). DOER asserts that the Department has indicated in Competitive Market Initiatives, D.T.E. 01-54-A, at 24 and n.16 (2001) that recovery of costs incurred to provide supplier services are appropriately recovered through a utility's base rates not through charges to suppliers (id.).

AllEnergy argues that Bay State's proposal to recover only the additional costs associated with information technology and administrative support services provided to

suppliers amounts to a single-issue rate case (id. at 4). AllEnergy notes that the Department has repeatedly rejected single-issue rate cases in the past, and should reject it in this instance (id., citing Mass-American Water Company, D.P.U. 95-118, at 175 (1995); Fitchburg Gas and Electric Light Company, D.T.E. 97-115/98-120, at 39 (1999); New England Tel. & Tel., D.P.U. 97-18-A, at 8 (1997); Housatonic Water Works, D.P.U. 95-81, at 3 (1996); Boston Edison Company, D.P.U. 92-23/92-24 (1992)).⁶

With regard to the General Pool Administration Service Fee, AllEnergy notes that pool administration is required to administer Bay State's terms and conditions for transportation service, and that Bay State is essentially the only entity that can provide pool administration services to its customers (AllEnergy Brief at 9-10). AllEnergy claims that since Bay State has been performing pool administration functions since 1999 when it entered into a rate settlement, some level of these fees might already have been embedded in the Company's rates (id. at 10). AllEnergy, therefore, urges the Department to deny Bay State's petition to charge the proposed \$0.10 per customer per month fee, and suggests that the revenue requirement for the proposed supplier fees be determined through a base rate proceeding (id. at 4-5).

⁶ AllEnergy also argues that before Bay State is allowed to recover any costs associated with the provision of supplier services, the Department should direct the Company to demonstrate full compliance with the Electronic Business Transactions ("EBT") Report filed by the Massachusetts Gas Utilities Collaborative ("MGUC") on March 22, 2000 (AllEnergy Brief at 10). AllEnergy further asserts that if the Department decides to allow Bay State to charge supplier fees, the Department should subject the provision of the supplier services to a service quality index ("SQI") because a fee-for-service implies performance obligations on the part of Bay State (AllEnergy Brief at 10).

c. Bay State

Bay State asserts that the proposed supplier fees are fair, timely, and appropriate (Exh. BSG-1 at 2; Exh. DTE 1.10; Company Brief at 4). Bay State further argues that the proposed fees are explicitly contemplated in the Company's Terms and Conditions (Exh. BSG-1 at 6). Bay State notes that both the Company's previously approved and current Terms and Conditions describe these services in detail and authorize a fee or charge for such services (id.). The Company cites Sections 14.2.1, 14.2.2, 14.2.4, 24.5.9 and 24.6.6 of Bay State's Terms and Conditions, and the fact that the Terms and Conditions were developed in collaboration with, and approved by, all LDCs in Massachusetts as further evidence that supports Bay State's position that the proposed fees are appropriate (id. at 6-7).

Bay State argues that since the Company has proposed to use the revenues from supplier fees to offset the Company's revenue requirements, any delay in implementation of the fees would disadvantage the Company's ratepayers, by increasing the likelihood that Bay State would require rate relief immediately upon termination of its rate freeze (Exh. BSG-1 at 8). The Company states that a delay in implementing these fees would also serve to distort the true economics of competitive gas supply service during the transition period established by the Department in D.T.E. 98-32 (id.).

Bay State asserts that the Company's proposal is consistent with the Department's ratemaking principles because it assesses cost responsibility to the parties responsible for cost causation and avoids cross-subsidization (Company Brief at 9). The Company also argues that its proposal is fully consistent with the Department's findings in Model Terms and Conditions Investigation, D.T.E. 97-65 (1997).

The Company contends that the proposed supplier fees do not belong in distribution rates because they are not part of the distribution function (Company Brief at 10). Bay State explains that none of the Company's rate components or recovery mechanisms, including base rates, currently reflects or accommodates the recovery of the incremental costs of providing supplier services (id., citing Exh. D.T.E. 1-10).

Bay State claims that AllEnergy's argument that the Department has previously endorsed recovery of supplier fees through distribution rates in Competitive Market Initiatives, D.T.E. 01-54-A, at 24 and n.16 (2001) is misleading because, in that proceeding, the Department found that the supplier service involved (i.e., making customer lists available) provides a benefit to all distribution companies' customers (Company Brief at 11). The Company maintains that since the supplier services at issue in this proceeding are different from those services that are designed to promote competition for the general benefit of all customers the recovery of costs associated with the supplier services considered in this proceeding do not belong in distribution rates (Company Brief at 11; Company Reply Brief at 2).

Bay State claims that the arguments by DOER and AllEnergy that the Company's request for approval of supplier fees represents a request for a single-issue rate case is erroneous and without merit and should be disregarded (Company Brief at 18-19; Company Reply Brief at 5).⁷ Bay State argues that the Company is not seeking to create a new rate class,

⁷ Bay State claims that in the proceeding cited by AllEnergy to support its argument (i.e., Housatonic Water Works, D.P.U. 95-81 (1996)), the Department found that granting that petition would represent a request for a single-issue ratemaking because (1) a distinct sub-class of residential ratepayers would need to be created; (2) it would potentially require an adjustment to the revenue requirements of other Housatonic rate
(continued...)

or increase the revenue requirements of an existing rate class, both of which situations clearly require that the impact on all classes of customers be considered as part of the individual requests (Company Brief at 19, citing Commonwealth Gas Company, D.P.U. 92-151 (1992)). The Company maintains that its proposed supplier fees are not distribution rates, nor do the fees increase the revenue requirement or cost of service that determine the Company's existing distribution rate structure (Company Brief at 19; Company Reply Brief at 2). Bay State indicates that revenues from the proposed supplier fees will serve to offset distribution rates in future rate proceedings (id.).

Bay State argues that implementation filings, such as its filing in this proceeding, are routine and that the Department has never characterized such filings as single-issue rate cases (Company Brief at 20). Bay State further notes that the Department has routinely authorized companies to implement new services or fees outside of the context of a general rate proceeding where the services are not core distribution services (Company Reply Brief at 4, citing Boston Gas Company, D.P.U. 96-50, at 249 (1996); Greater Media, et al., D.P.U. 92-218 (1992); Massachusetts Electric Company, D.T.E. 98-52 (1998); Massachusetts Electric Company, D.T.E. 98-26 (1999); and Boston Gas Company, D.P.U. 92-259 (1993)).

Regarding the Company's proposed Standard Passthrough Billing fee, Bay State asserts that the fee is based on the incremental costs the Company has incurred and will continue to incur to provide these services (Company Brief at 16, citing Exh. BSG-1 at 2;

⁷(...continued)

classes; and (3) it would require the establishment of a new revenue requirement for the proposed seasonal rate class (Company Brief at 19, citing Housatonic Water Works, D.P.U. 95-81, at 3 (1996)).

Exhs. DTE 1-10, DTE 1-13). Bay State explains that the proposed fee reflects only those costs incurred by the Company to provide suppliers with data and information that suppliers require to ensure that the billing of their customers for natural gas commodity is consistent with the utility bill those customers receive for transportation service, in the event the supplier elects to do its own commodity billing (id., citing Exh BSG-1 at 3.)

Bay State argues that the billing service costs are not included in the Company's base rates (id.). The Company notes that Mr. Ferro testified that the incremental costs associated with Passthrough Billing service are not reflected in the Company's cost of service because this service was not being performed in 1992 during the Company's last base rate case (id., citing Tr. at 40-41)

Regarding the Standard Complete Billing Service fee, Bay State notes that the Company offered Complete Billing Service as part of its Pioneer Valley Pilot Program ("Pilot Program") and charged a fee for the service (id., citing Exh. BSG-1 at 3). The Company argues that its experience in the Pilot Program, in which it charged \$1.25 per bill per month for this service, was used only to evaluate the reasonableness of the proposed rate, and not to establish the incremental costs associated with the service (id., citing Exh. DOER 1-8).

The Company also contends that its proposal to base this fee on a market basis, rather than a cost basis, is consistent with Department precedent (id., citing Interruptible Transportation, D.P.U. 93-141-A (1996)). Bay State further argues that the fee is market-based because this is an optional service, and if suppliers determine that they could procure the service or develop the infrastructure at a lower cost, they will do so (Company Brief at 18).

With regard to the proposed General Pool Administration Fee of \$0.10 per customer account per month to be billed to suppliers,⁸ Bay State argues that the fee is cost-based in that it is based on an estimate of information systems costs charged to the Company, which is consistent with Bay State's experiences and cost structure (Exh. BSG-1 at Appendix A, Section IV; Company Brief at 15). Bay State contends that both AllEnergy and DOER are wrong to suggest that administration costs included in the proposed fee are currently embedded in base rates (Company Brief at 15). The Company asserts that the proposed fee will recover only incremental costs that are not currently reflected in rates (id.).

Finally, Bay State asks the Department to disregard AllEnergy's suggestions regarding the Electronic Business Transactions ("EBT") in this proceeding (Company Reply Brief at 6). The Company argues that it would be procedurally improper for the Department to make findings in this proceeding regarding implementation of Electronic Business Transactions because the Company was not provided notice that issues regarding EBT would be encompassed in this proceeding and thus did not proffer its own evidence in this regard (Company Brief at 22).

⁸ Bay State contends that DOER's suggestion that the Company will recover more than \$372,000 in revenues from the proposed fee is entirely inaccurate. The Company explains that assuming the current level of roughly 6,000 customers on supplier service, the annual revenues from the proposed fee would be roughly \$7,200 (Company Brief at 15).

5. Analysis and Findings

The Department has held that a request for an increase in a company's revenue will be considered only in the context of a general rate proceeding. Commonwealth Gas Company, D.P.U. 92-151, at 4 (1992), citing New England Telephone Company, D.P.U. 84-238 (1985); New England Telephone, D.P.U. 84-267 (1985). The record shows that the Company-proposed suppliers' fees will increase the Company's annual revenues by approximately \$115,000 (Exh. BSG-1, Appendix A at 2-5).⁹ These fees are proposed to recover certain costs relating to the provision of general information system maintenance and set-up costs, communications, and transportation customers' pool information and administration (id.).

Although the Company has claimed that the proposed fees are designed to recover incremental costs and that those costs are not part of the Company's distribution function, a review of the record in this proceeding shows that those costs may not all represent net incremental costs (Exh. D.T.E. 1-10; Tr. at 45-48). For example, the record shows that, although the costs associated with the proposed standard complete billing service fee were based on the Company's consolidated systems activity with Northern Utilities and that "[s]uch consolidation can only serve to reduce unit costs due to any gains in economies of scale," the Company acknowledged on the record that the net savings from such consolidation have not

⁹ This annual amount consists of: (1) standard passthrough billing fees of \$45,000 for general system maintenance costs; (2) standard complete billing fees of \$45,000 for general system maintenance plus \$12,015 for information systems and other set-up costs plus \$5,742 representing a "market-based" component cost; and (3) \$7,500 in transportation customers general pool administration costs (Exh. BSG-1, Appendix A).

been quantified (Exh. DOER-1-6; Tr. at 43-44).¹⁰ Also, based on a review of the Company's method for estimating the 29 cents per bill per month, which Bay State claimed to be the "market-based" component cost of its proposed Standard Complete Billing Service fee, the Department is not persuaded that this cost component represents net incremental cost (Exhs. D.T.E. 1-12, D.T.E. 1-14; Tr. at 113-114). The record also shows that the Company, under its rate unbundling pilot program, is currently receiving fees for services similar to the Standard Complete Billing Service from suppliers through agreements entered into between the Company and suppliers (Tr. at 34-35). Therefore, approval of this fee could result in overcollection. In addition, the Company has not demonstrated that the costs associated with general pool administration are net incremental costs. Therefore, these costs may be supported by the Company's operations and maintenance, the costs of which are already included in the existing base rates.

The Department has stated that in an unbundled competitive market environment, the ultimate goal should be to provide alternative services that reflect market prices so that customers can make efficient choices. Boston Gas Company, D.P.U. 93-60, at 413 (1993), citing New England Telephone and Telegraph Company, D.P.U. 1731, at 18 (1985); Gas Transportation, D.P.U. 85-178, at 10 (1987). In addition, the Department noted that: "identical base rate charges for both firm sales and transportation services could enable the [c]ompany to achieve its stated rate design objective of making itself indifferent between

¹⁰ In Model Terms and Conditions, D.P.U./D.T.E. 97-65, at 77 (1997), the Department stated that in general, it supports the principle that distribution companies should be allowed to charge fees directly to competitive suppliers "to recover net incremental costs (i.e., costs net of savings)."

transportation and sales purchases, from a revenue requirement basis.” Boston Gas Company, D.P.U. 93-60, at 413. To the extent that the Company’s proposed fees would recover costs that are not incremental in nature, the Company may not be indifferent between providing sales and transportation services from a revenue requirement basis. Consequently, the Department may not be able to achieve its ultimate goal of providing alternative services that reflect market prices so that customers can make efficient choices.

Although the Company’s existing Terms and Conditions tariff provides that the Company may charge fees to suppliers for providing Standard Passthrough Billing Service, Standard Complete Billing Service, and Aggregation Pool Service, the Terms and Conditions also expressly provide that such fees are subject to Department approval. Terms and Conditions, §§ 14.2.2, 14.2.1, 24.6.6. As noted above, the Department has stated that it supports the principle that distribution companies should be allowed to charge fees to recover net incremental costs, i.e., costs net of savings. D.P.U./D.T.E. 97-65, at 77. To the extent that the Company’s proposed fees are not incremental in nature and do not take into account net savings, such proposed fees would violate such a principle. Based on the above considerations, the Department rejects the Company’s proposed Standard Passthrough Billing Service fee, Standard Complete Billing Service fee, and General Pool Administration fee.

DOER and AllEnergy also argue that the Company’s proposed fees should be rejected because the proposal represents an attempt to open a single-issue rate proceeding. Since we are rejecting the proposed fees on the basis that Bay State has not demonstrated that the costs are incremental, we need not address that argument here.

Lastly, the Department notes that we are concerned about the allegations of Bay State's non-compliance with the EBT. The Department notes that the implementation of an EBT protocol is one of the issues to be addressed by the Massachusetts Gas Unbundling Collaborative. We encourage the collaborative participants to resolve this issue or present it to the Department for final resolution.

C. Switching Fee

1. Company Proposal

Bay State has proposed a fee of \$10 per customer per switch, which would be applied to suppliers taking a customer from another supplier's pool or moving a customer from one of the Company's pools to another (Exh. BSG-1 at 1, 4). Bay State states that the proposed fee is based, in part, on Bay State's historic experience during the Pilot Program, wherein Bay State contends that Switching fees effectively deterred slamming without negatively affecting supplier participation in the unbundled marketplace (Exh. BSG-1 at 4; Exhs. D.T.E. 1-7, D.T.E. 1-8(f)). The Company explains that a reason for the proposed fee is that suppliers will have greater incentive to be more careful with customer enrollments and departures if there are costs associated with customer switching (Exh. BSG-1 at 4). The Company states that the switching fee would also help defray the unique costs of account maintenance that such activity requires, such as the added expense of the notification to each supplier and customer of the change (id.).

Bay State admits that the Company has not specifically based the proposed \$10 customer switching fee on the incremental account maintenance costs incurred to provide this service (id.). The Company explains that it is difficult to capture the cost of each and every transaction when a customer switch takes place (id.). The Company contends that it is appropriate to

charge suppliers for the incremental costs associated with customer switching because suppliers who benefit from using the Company's various personnel and billing systems should bear the costs for such services (id.). To do otherwise, argues the Company, would unfairly burden the Company with the incremental costs incurred to provide unbundled services, and force Bay State to recover these costs from all of its firm bundled and transportation customers in the future through base rates in a general rate case (Exh. BSG-1 at 4-5).

2. Positions of the Parties

a. DOER

DOER argues that although Bay State claims that the proposed fee is based, in part, on the Company's experience during the Pilot Program, Bay State failed to provide the information developed during the Pilot Program upon which the fee is based. Moreover, DOER notes that the Company's witness agreed that no statistical correlation existed between the switching fees charged by the Company and the number of slamming cases during the Pilot Program, and the fees claimed to be incremental are not supported by any data, analyses, or Company records (DOER Brief at 12; DOER Reply Brief at 7-8). Thus, DOER argues that the Department should deny the Company's petition to charge the proposed \$10 customer switching fee because it is unsupported (DOER Brief at 17; DOER Reply Brief at 10).

b. AllEnergy

AllEnergy argues that the Company provided no evidence that the switching fee would be a deterrent to slamming (AllEnergy Brief at 8). AllEnergy notes that the Department already has extensive regulations in place pertaining to slamming which render the Company's proposal redundant and unnecessary (id., citing 220 C.M.R § 14.06). AllEnergy further notes

that Bay State was not able to quantify what percentage of the proposed fee is attributable to the administrative costs associated with customer switching and what percentage to the deterrent function (id.).

AllEnergy argues that a standard requirement in utility cost recovery is that a utility must demonstrate that its costs are known and measurable before it may be permitted to recover them; in this case, according to AllEnergy, Bay State failed to satisfy this requirement (id.).

AllEnergy further argues that Bay State's proposal to keep the revenue from the switching fee is inconsistent with the ratemaking treatment for other penalties collected by LDCs (id. at 9).

AllEnergy contends that if the Company intends a portion of the proposed fee to be a deterrent, then Bay State should not be allowed to profit from the revenue accruing from the customer switching fee (id.).

c. Bay State

Bay State asserts that the \$10 customer switching fee was part of the Company's Pilot Program (Company Brief at 13; citing Tr. at 14, 104-105; Exh. D.T.E. 1-7). The Company contends that the switching fee is primarily intended to ensure that appropriate care is undertaken in making customer switches, but also will help defray unique costs associated with account maintenance that such switching activities require (Exh. BSG-1 at Appendix A, Section IV.B; Company Brief at 13-14). The Company argues that the success of the Pilot Program demonstrates that the switching fee was not a deterrent to customer migration (Company Brief at 13; citing Exh. D.T.E. 1-7; D.T.E. 1-18(b)). The Company states that while slamming cases were reported during the Pilot Program, the fact that no slamming fines were assessed provides evidence that the \$10 switching fee was a tangible factor that helped control the

number of slamming calls (id.). Bay State argues that the proposed switching fee is consistent with switching fees charged in other jurisdictions in gas and electric markets and the telecommunications industry (Company Brief at 13).

While the Company recognizes that there are additional measures in place under the Department's regulations to address unauthorized customer switching, the Company believes that the \$10 switching fee provides the appropriate incentives to suppliers to take proper care in customer switching, and thus should minimize the instances in which customers would have to resort to the complaint process (id. at 14).

The Company argues that contrary to the assertion by AllEnergy that Bay State proposes to keep the revenues from switching fee, the Company, in fact, proposes to use the revenues to reduce the Company's cost of service in a general rate case, thereby benefitting customers (Company Brief at 14, citing Exh. AE-1-11(c)).

3. Analysis and Findings

The Department agrees with Bay State that there are certain administration costs associated with customer switching, including costs of account maintenance, costs associated with customer and supplier notification, costs associated with backroom billing support, and costs of arbitration between customers and suppliers, which the Company incurs to process transactions relating to customer switching. The Department notes that pursuant to Appendix B of the Company's Terms and Conditions, Bay State has the authority to recover costs associated with customer administration. However, the fee that the Company can charge for services related to customer administration is subject to Department review and approval.

The record in this case shows that the \$10 per customer per switch fee proposed by the Company is not based solely on the actual administration costs that the Company incurs in managing a customer switch, but also includes a deterrent element which the Company claims will deter customer slamming (Exh. BSG-1 at 2; Tr. at 53- 54). The record further shows that although the Company claims that the \$10 switching fee would deter customer slamming, the Company failed to demonstrate a statistical association between customer switching fees and customer slamming cases (Tr. 109-111). Moreover, the Department notes that Bay State failed to quantify what percentage of the proposed fee is attributable to the administrative costs associated with customer switching and what percentage to the deterrent element (Exh. BSG-1 at 4; Exh. BSG-1 at Appendix A at 5).

The Department notes that under its cost-of-service regulation the long-standing policy has been that all recoverable fees must be cost-based. See Essex County Gas Company, D.P.U. 93-225 at 18-19 (1994); see also, Colonial Gas Company, D.P.U. 93-78-A, at 23, 28 (1993); Commonwealth Gas Company, D.P.U. 95-102, at 37, 96 (1995). The Department rejects Bay State's contention that "the switching fee should be both cost-based and deterrent-based" (Exh. D.T.E. 1-18(c)). The Department finds instead that the switching fee must be solely cost-based, with no deterrent component. The Department, therefore, rejects Bay State's petition to charge the \$10 per customer per switch fee to suppliers because it is not solely based on the actual costs incurred by the Company for providing these services. Further, consistent with our discussion in Section II.B.5, the Company has failed to demonstrate that some of the costs associated with customer switching are not already being recovered via base rates.

D. Telemetry Fees

1. Company Proposal

Section 11.5.1 of the Terms and Conditions provides: “The Company shall furnish and install, at the Customer’s expense, telemetry equipment and any related equipment for the purpose of measuring Gas Usage at each Customer’s Delivery Point. The Company shall require each Customer to install and maintain, at the Customer’s expense, reliably available telephone lines and electrical connections that meet the Company’s operating requirements. Telemetry equipment shall remain the property of the Company at all times” (Exh. BSG-1 at Appendix A, Section V). The Company states that the services that Bay State will provide under the Daily Metered Service include making telemetry technology available to customers, installing telemetry device at customer locations, and maintaining telemetry devices (id.).

Bay State proposes to charge a one-time fee of \$1,400 for instrumented meters (which includes \$1026 for the cost of the device, \$117 for the cost of ADM Cover, \$121 for the cost of miscellaneous parts, and \$145 for the cost of installation) and \$475 for non-instrumented meters (which includes \$221 for the cost of the device, \$18 for the cost of ADM Cover, \$90 for the cost of miscellaneous parts, and \$145 for the cost of installation) for Daily Metered Service provided to suppliers (Exh. BSG-1 at 2; Exh. BSG-1 at Appendix A, Section V). Bay State also proposes to charge a monthly maintenance fee of \$6.50 for each meter installed by the Company (id.). The Company explains that the \$6.50 maintenance fee includes the cost of daily phone calls, the cost of a battery change every 18 months, the cost of battery disposal, and labor costs (id.). Since the Company has not enrolled any new Daily Metered Service

customers since the implementation of its Terms and Conditions on November 1, 2002, it has had no cause to assess the one-time fee (id.). Bay State contends that the Company already has the authority to charge fees for Daily Metered Service pursuant to Section 11.5.1 of the Company's Terms and Conditions, and that the Company is only informing the Department of its telemetering fees (Exh. BSG-1 at 2).

2. Positions of the Parties

a. DOER

DOER asserts that Bay State's proposed fees for the Daily Metered Service are based on the wholesale costs of the devices plus the cost of storage, the "corporate markup policy" amount added to each device, and the corporate average derived for time spent on installations and maintenance (DOER Brief at 5-6, citing, Tr. at 17). DOER contends that the corporate markup policy raises the price of an instrumented meter from \$570 to \$1026, the price of non-instrumented meter from \$85 to \$221, and the prices for AMD covers and miscellaneous parts from \$45 to \$117 and \$46 to \$121.30, respectively (id. at 6).

DOER argues that Bay State could not explain the basis for the corporate markup policy, and that the Company submitted in evidence one piece of paper, dated November 17, 1997, entitled "Current Price Mark Up Policy" (id. at 7). The document, which was issued by the Purchasing Department to warehouse personnel, identified percentage increases based upon costs from \$0 to \$250 as Bay State's corporate markup policy (id.). DOER contends that for Bay State to refer to a memo issued by the Purchasing Department to warehouse personnel as a "corporate policy" strains credibility (id.). DOER argues that the Company failed to support

the proposed telemetering fees and installation costs with any quantitative analysis to demonstrate that the proposed fees are just and reasonable (id.).

DOER contends that Bay State could not explain the extent to which the proposed telemetering fees have already been accounted for in base rates (id.). DOER asserts that while Bay State included a provision for telemetering fees in its Terms and Conditions, the amounts to be charged require the Department's review and approval (id.). DOER urges the Department to deny Bay State's petition to charge the proposed telemetering fees because the Company failed to demonstrate that the fees are just and reasonable (id. at 7, 17).

b. Bay State

Bay State argues that the proposed telemetering fees are cost-based and are designed to recover costs associated with installation of new devices for daily-metered transportation customers (Company Brief at 11). Bay State maintains that the Company's Terms and Conditions, as currently approved by the Department, authorize it to recover telemetering costs (id. at 12). Bay State cites the record in this case to support its position that it provided an adequate explanation of its telemetering charge (id. at 12, citing Exh. BSG-1 at Appendix A, Section V and Exh. D.T.E. 1-4).

Bay State explains that the basis for the Company's markup policy is to include overhead rates that reflect specific categories of costs that the Company incurs, including taxes and storage and carrying costs associated with maintaining the devices in inventory for periods longer than one year (id. at 12). Bay State claims that the Company's telemetering fees are consistent with the fees charged for similar services by other Massachusetts LDCs, which range

from \$900 (for both instrumented and non-instrumented meters) to \$1,500 (id., citing Tr. at 98-100).

Bay State refutes DOER's assertion that the costs of the telemetering devices are already included in base rates (id. at 12). The Company explains that the meters were installed after the Company's last rate case in D.P.U. 92-111 (1992), and that none of the meter costs proposed in this proceeding were included in the test year for the Company's last rate case (id.). The Company explains that the METSCAN devices that the Company installed in the 1992 time frame were installed for a different purpose, which is to provide automated meter reading on all meters (id. at 12).

3. Analysis and Findings

Section 11.5.1 of Bay State's Terms and Conditions states that:

The Company shall furnish and install, at the Customer's expense, telemetering equipment and any related equipment for the purpose of measuring Gas Usage at each customer's Delivery Point....Telemetering equipment shall remain the property of the Company at all times.

Section 11.5.2 of the Company's Terms and Conditions states that:

...The Customer or Supplier shall bear the cost of providing and installing the telemetering equipment, communication device, or any other related equipment, and shall have electronic access to the Customer's Gas Usage information. Upon installation, the telemetering equipment or communication device shall become the property of the Company and will be maintained by the Company...The Company shall bill the Customer or Supplier upon installation.

The Department notes that the above sections of the Company's Terms and Conditions state that customers shall bear the costs of telemetering equipment and any related equipment for the purpose of measuring gas usage at each Customer's Delivery Point. The sections also state that upon installation, this equipment will become the property of the Company and will be

maintained by the Company, and that Bay State will bill the customer or supplier upon installation.

The Department observes that the Company's Terms and Conditions give Bay State a virtual monopoly over the provision, installation, testing, and maintenance of telemetering equipment and communication device to customers or suppliers. It is, therefore, important that the Department exercise its oversight responsibility to ensure that Bay State does not over-charge customers or suppliers for these services. The Department notes that in Essex Gas Company, D.P.U. 93-225, at 18-19 (1994), Essex Gas Company was allowed to recover from customers the cost of such telemetry equipment but without any corporate markup.

The Department, therefore, rejects Bay State's petition to charge suppliers or customers a one-time fee of \$1,400 for instrumented meters and \$475 for non-instrumented meters because these fees are not cost-based, but include an element of a corporate markup policy. The Department directs Bay State to bill customers or suppliers the actual purchase costs of the telemetering equipment, communication device, and other related equipment, and not to include any corporate markup in the cost of providing customers or suppliers with Daily Metered Service.

With regard to the \$6.50 per month maintenance fee, the Department notes that in regard to telemetering and related equipment, the Company's Terms and Conditions limit the customers' financial responsibility to furnishing and installation of such equipment. Moreover, the Department also notes that the Company's Terms and Conditions do not authorize Bay State to bill customers or suppliers for the maintenance of this equipment. The Department, therefore, rejects Bay State's petition to charge a monthly fee of \$6.50 for the maintenance of

the telemetering equipment, communication devices, and any other related equipment. The costs associated with the maintenance of the telemetering equipment, communication devices, and any other related equipment used by the Company to provide Daily Metered Service to customers or suppliers are similar in nature to the costs associated with the maintenance of the Company's distribution system.

III. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That Bay State Gas Company's Revisions to tariff M.D.T.E. No. 2 be, and hereby are, DENIED; and it is

FURTHER ORDERED: That Bay State Gas Company's proposed fees for the installation of Telemetering equipment be, and hereby are, DENIED; and it is

FURTHER ORDERED: That Bay State Gas Company is directed to bill customers or suppliers the actual purchase costs of the telemetering equipment, communication device, and other related equipment, and not to include any corporate markup in the cost of providing customers or suppliers with Daily Metered Service; and it is

FURTHER ORDERED: That Bay State Gas Company must comply with all other directives in this Order.

By Order of the Department,

Paul B. Vasington, Chairman

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Drawing upon considerable experience from its pilot programs, Bay State Gas Company would exercise the authority of the Company's Terms and Conditions, already approved by this Department, to levy reasonable, cost-based fees for services now rendered virtually scot-free to competitive gas suppliers. Previous approval of these Terms and Conditions shows that the Department contemplated and sanctioned the fees' legitimacy – in principle at least, though subject to its review and approval. The company has shown that its fee levels are fair and has argued convincingly that failure to recover costs from gas suppliers (not rate payers, mind you¹¹) is both a subsidy of the suppliers' enterprises and an economic distortion in the market place. The fees are reasonable in both purpose and amount. The request merits approval: it would merely take what is now a free lunch and put it on a cash basis.

James Connelly, Commissioner

¹¹ The claim of some participants that the Company's petition amounts to a proscribed single-issue rate case is a gross mischaracterization of the ratesetting process. The Company's request is contemplated by approved Terms and Conditions and affects not distribution rates, but the costs incident to providing services to other businesses in the gas industry.

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).